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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,197	08/07/2000	Christopher W.B. Goode	DIVA 264	3493
56015	7590	04/06/2006	EXAMINER	
PATTERSON & SHERIDAN, LLP/ SEDNA PATENT SERVICES, LLC 595 SHREWSBURY AVENUE SUITE 100 SHREWSBURY, NJ 07702			HUYNH, SON P	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/633,197

Applicant(s)

GOODE, CHRISTOPHER W.B.

Examiner

Son P. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8-19,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-19,22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/25/2005 has been entered.

### ***Response to Amendment***

2. Applicant's arguments with respect to claims 1-6, 8-19, 22-23 as amended, have been considered but are moot in view of the new ground(s) of rejection.

Claims 7, 20-21 have been canceled.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 13-15 and 18-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Sie et al. (US 6,973,662).

Regarding claim 13, Sie discloses apparatus (television cable provider) coupled to a plurality of subscribers (at the set top boxes) and to content suppliers (content providers such as providers of commercial supported channels, provider of commercial free channels, providers of video on demand, etc. – col. 4, lines 20-36, figure 1-3, 14-16), the apparatus comprising:

a server complex (i.e. program server – figures 1, 14-16) at a cable television system operator location (at the cable television provider – figure 1), comprising a plurality of partitions (plurality of disk drives or platters), each of the partitions storing video assets provided by respective content suppliers (each disk drive or platter stores video assets of digital channel correspond to respectively content providers – col. 4, lines 20-36; col. 19, line 16-col. 21, line 6). Sie further discloses the control circuit that controls the operations of the cable television provider (figures 1, 14-16; col. 19, line 16-

col. 21, line 6). Since claim 13 recites the limitation of “a controller **capable** of: (i) controlling...” which is an apparatus claims **functional language**, it is inherent that the control circuit in Sie’s reference performs the functions of the controller as claimed (see MPEP 2114 – Apparatus and Article Claims- Functional Language).

Regarding claim 14, Sie further discloses the cable television provider has control circuit that controls operation of the cable television provider such as interacts with additional content providers in order to supply additional programs to users (col. 4, lines 22-33, figures 14-16). Sie also discloses the storing content from content providers according to user specific information, club specific information, program specific information, usage information, each platter or disk drive store each digital channel, club members download club programs more quickly, etc. (col. 3, line 65-col. 5, line 4; col. 20, lines 18-67). Thus, content suppliers provisions respective server complex partition according to rules implemented by the controller (i.e. download club programs from club program provider to server storage more quickly based on club program information, club member information, etc. stored at the cable television provider).

Regarding claim 15, Sie further discloses cable television provider interacts with additional content providers in order to supply additional programs to users (col. 4, lines 22-33, the content provider provides interactive services, home shopping, pay per view, etc. to the cable television provider for later providing to the subscribers at the set top boxes (see including, but is not limited to, figure 1, col. 4, lines 22-35, col. 23, lines 1-

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58). Inherently, the rules define at least one of navigation parameter (so the cable television provider can interact with content provider), a promotion parameter (so the user can access promotional data such as music videos, preview of pay per view, etc.) and a packaging parameter provided by the content provider.

Regarding claim 18, Sie discloses content providers provides program to be stored in particular disk drive, platter of storage according to user information, program information, program club information, class of program, etc. (see including, but are not limited to, figures 1, 14-16, col. 4, lines 27-67; col. 19, line 55-col. 20, line 45, col. 23, lines 30-57) broadly reads on the content suppliers adapt the content stored in the respective partitions in response to content centric data provided by the controller.

Regarding claim 19, Sie further discloses the controller is coupled by a signal path (i.e. satellite or cable path) to the content provider (figures 1, 14-16, col. 4, lines 20-36). Sie further discloses the content providers provide content such as video on demand, commercial free channels, etc. to cable television system. The cable television provider stores the content from content providers and provides to subscriber upon request (col. 3, line 66-col. 4, line 67; col. 7, lines 3-35). Inherently, the signal path providing rules from the content provider to the controller, the rules defined according to the content provider and comprising pricing rules for the video assets so that the controller at the cable television provider knows the pay per view program, video on demand program, free program, etc.;

The controller is inherently **capable** of distribution of the video assets according to the rules (see MPEG 2114).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 6, 8-10, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sie et al. (6,973,662) in view of Gordon (5,920,700) and further in view of Thomas Huston et al. (US 2002/0007402).

Regarding claim 1, Sie discloses a method, comprising cable television provider (program server, subscriber server, subscriber management system, program request database, transmission system – figures 1, 14-16) that receives content from a plurality of additional content providers such as providers for providing commercial supported channel, providers for providing commercial free channels, providers for supplying video on demand, etc. (figure 1, col. 4, lines 11-36). The content from these providers are provided to cable television provider and stored at in mass storage device of program server located at the cable television provider (figures 14-16, col. 4, lines 11-20, lines

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63-67; col. 19, line 15-col. 20, line 40). Each digital channel is stored in different disk drive or a respective surface of the platter in a single disk (col. 19, line 16-col. 20, line 39). The cable TV operator control select circuit such as stored multi channel program stream (col. 18, lines 56-59). Inherently, the method comprising:

establishing, by a cable television system operator (cable TV operator at the cable television provider), a resource with each of at least one content provider (disk drive or platter in the storage assigned to respective digital channel of additional content provider), each content provider storing at least some of a plurality of video assets within the resource at at least one cable television system operator location, a resource comprises a memory resource (each content provider provides content on digital channel for storing in respective disk drive or platter of the storage, storage comprises memory resource for storing data from digital channel);

fulfilling subscriber requests for available content stored at the at least one cable television system operator location, the fulfilling comprising providing the subscriber request to the subscriber over a cable television delivery system (the cable television provider receives request from subscribers at the set top box, processing the requests and provides the requested program to the subscribers over cable television delivery system (108) – see including, but are not limited to, figures 1, 14-16, col. 4, line 37-col. 5, line 18 );

generating usage statistics (generating reports usage – col. 5, lines 50-60);



selecting, according to the at least one content provider, which video assets are stored in the resource (selecting digital channel corresponding to at least one content provider to be stored in respective disk drive or platter – col. 25-40).

Sie does not specifically disclose providing usage statistic to at least one content provider, increasing and decreasing a capability of the memory resource in response to the usage statistic, and the disk drive or platter is resource lease. However, Gordon discloses increasing and decreasing a capability of the memory resource in response to the usage statistic (increasing and decreasing the number of copies of any video asset in response to usage statistic – see including, but is not limited to, col. 8, line 40- col. 9, line 13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Sie to use the teaching as taught by Gordon in order to improve efficiency in data transmission such as minimizing video asset data blocked down during peak time and reduce delay time to provide requested data to subscribers (col. 2, line 60-col. 3, line 10). However, Sie in view of Gordon does not specifically disclose providing statistic to at least one content provider, and resource lease.

Thomas Huston discloses content provider is informed by the access provider of the usage statistic/requests of the content (paragraphs 0064-0072) broadly read on “providing said usage statistics to said at least one content provider”; Thomas further discloses the access provider guarantee a minimum amount of space to particular content provider according to an agreement with an access provider to host the content

provider's content on traffic server. The content provides content for storing in the allocated space (paragraphs 0063, 0066). Inherently, the operator at service provider establishes a resource lease (allocated space) with each of at least one content provider, and each content provider storing content within the leased resource at the service provider operator location (store content in allocated space). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Sie in view of Gordon to use the teaching as taught by Thomas Huston in order to allow content providers to better manage their content (paragraph 0016, lines 8-11).

Regarding claim 2, Sie in view of Gordon and Thomas discloses a method as discussed in the rejection of claim 1. Sie further discloses generating service centric data (i.e. membership privileges, membership history, program usage by class of program, etc. – col. 4, lines 37-62); and adapting service operation according to the usage statistics and service centric data (providing services according to user specific information and usage reports – col. 4, lines 1-67). Alternatively, Gordon discloses tracking bandwidth available at each server, location of particular copy, available storage space, and user demand for particular program and providing video content according these information (col. 3, line 45-67, col. 4, line 59-col. 5, line 63; col. 8, line 40-col. 9, line 13) broadly read on generating service centric data and adapting service operation according t the usage statistics and the service centric data. Furthermore, Thomas also teaches generating service centric data (e.g. generating requests that could not be processed – par. 0065);

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adapting service operation according to the usage statistics and the service centric data (e.g. deleting particular content which remains in cache for a specified time without a request for the particular content – par. 0057. Additional attempts to process requests that cannot be processed may be periodically made– par. 0065-par. 0066).

Regarding claim 3, Sie in view of Gordon and Thomas discloses a method as discussed in the rejection of claim 1. Sie further discloses generating content centric data (i.e. membership privileges, membership history, program usage by class of program, etc. – col. 4, lines 37-62); and adapting service operation according to the usage statistics and content centric data (providing services according to user specific information and usage reports – col. 4, lines 1-67). Alternatively, Gordon discloses tracking bandwidth available at each server, location of particular copy, available storage space, and user demand for particular program and distributing video content according these information (see including, but are not limited to, col. 3, line 45-67, col. 4, line 59-col. 5, line 63; col. 8, line 40-col. 9, line 13) broadly read on generating content centric data and adapting service operation according t the usage statistics and the service centric data. Furthermore, Thomas also teaches generating content centric data; and providing the content centric data to the at least one content provider (e.g. generating number of content accessed, time, etc. and providing these data to the content provider – par. 0064-par. 0071).

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Regarding claim 6, Thomas further disclose deleting particular content if it remains in cache in a specified time without a request for the particular content (par. 0056), or pre-fetch content according to a user and content specific basic (par. 0056-par. 0058) reads on the claimed limitation "said leased resource is adapted in response to said usage statistics"

Regarding claim 8, the limitation as claimed correspond to the limitation of claim 1 and are analyzed as discussed with respect to the rejection of claim 1, wherein the limitation "assigning" correspond to the limitation "establishing", and the plurality of content providers reads on content providers for providing commercial supported channels, commercial free channels, pay per view, video on demand, etc. (Sie, col. 4, lines 21-35).

Regarding claims 9-10, the claimed limitations correspond to the claimed limitations as claimed in claims 2-3, and are analyzed as discussed with respect to the rejection of claims 2-3.

Regarding claim 22, Sie in view of Gordon and Thomas discloses a method as discussed in the rejection of claim 1. Sie further discloses the content providers provide content such as video on demand, commercial free channels, etc. to cable television system. The cable television provider stores the content from content providers and provides to subscriber upon request (col. 3, line 66-col. 4, line 67; col. 7, lines 3-35).

Thus, the method comprises defining rules for the video asset (i.e. for video on demand, pay per view, subscriber has to pay for view), the rule comprising pricing rules (i.e. price for each access to video access, or price of additional access; fulfilling subscriber requests for available content stored at the cable television system operator location according to a rule (i.e. fulfilling subscriber request for video on demand stored at the cable television provider according to user membership history, account balance, price of program). It is obvious to one of ordinary skill in the art that the rules comprising pricing rule is provided from content provider to the cable television operation so that the content provider can control the revenue (benefit of particular program).

Regarding claim 23, Sie in view of Gordon and Thomas discussed a method as discussed in the rejection of claim 1. Sie further discloses the source comprises a portion of a server complex having a plurality of resource partitions (tape, or disks, disk drive, buffers, etc. – col. 4, lines 11-21; col. 19, line 15-col. 20, line 39). Sie further discloses if the user does not view the program in a predetermined time, the user could be prompted such that the user could decide which program should be retained or removed (col. 16, lines 38-54). It is obvious to one of ordinary skill in the art to migrating content assets between resource partitions according to usage statistic such as moving the frequency requested asset to location that is accessed quicker for the user and archiving rarely requested asset to tape in order to improve efficiency of space utilization (i.e. storing frequent requested data in location that allow user to access quickly).

7. Claims 4-5, 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sie in view of Gordon and Thomas Huston as applied to claim 1 or claim 8 above, and further in view of Carlin et al. (US 6,119,152).

Regarding claim 4, Sie in view of Gordon and Thomas teaches a method as discussed in the rejection of claim 1. However, Thomas does not specifically disclose remitting compensation to the at least one content provider in response to the usage statistics.

Carlin teaches the owner of multi-provider pay to the provider revenues received from the subscribers (col. 6, lines 30-36) reads on the claimed limitation "remitting compensation to said at least one content provider in response to the usage statistics." Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Sie in view of Gordon and Thomas to use the teaching as taught by Carlin in order to provide an alternative way to pay content provider.

Regarding claim 5, Carlin further teaches the owner of the multi provider on line service subtracts its fees from the revenues received from the subscribers and pays the difference to the provider (col. 6, lines 30-36) reads on the claimed limitation "said remitted compensation is offset by the value of said lease." Therefore, it would have been obvious to one of ordinary skill in the art to modify Sie in view of Gordon and Thomas to simplify transaction transferring (e.g., the service provider transfers

compensation after subtracting all fees that the service provider charges content provider instead of the service provider transfers all revenues to content provider and then the content provider transfers back the fees that the service provider charges to content provider).

Regarding claims 11-12, the limitations as claimed correspond to the limitations as claimed in claims 4-5 respectively, and are analyzed as discussed with respect to the rejection of claims 4-5.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sie et al. (6,973,662) as applied to claim 13, and further in view Thomas Huston et al. (US 2002/0007402).

Regarding claim 16, Sie discloses an apparatus as discussed in the rejection of claim 13. Sie does not specifically disclose the server complex partitions are leased to the content suppliers.

However, Thomas discloses the server complex partitions (access and traffic provider) are leased to content suppliers (content providers) – paragraph 0063. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Sie to use the teaching as taught by Thomas in order to guarantee a minimum amount of space to particular content providers to allow content providers to better manage their content (paragraphs 0016, 0063).

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sie et al. (6,973,662) as applied to claim 13, and further in view of Martin et al. (US 6,606,607).

Regarding claim 17, Sie teaches an apparatus as discussed in the rejection of claim 13. However, Sie does not specifically disclose auctioning.

Martin discloses system and method for coordinating an auction for an item between a multi auction services (col. 6, lines 44-63). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Sie to use the teaching as taught by Martin in order to allow seller to obtain highest price of an item.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Craig (US 5,790,176) discloses media server for supplying video and multi media data over public switched telephone network.

Bonomi et al. (US 6,769,127) discloses method and system for delivering media services and application over networks.



11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P. Huynh whose telephone number is 571-272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**It is noted that Group Art Unit 2611 has been changed to Group Art Unit 2623.**

SPH  
March 31, 2006

  
HAITRAN  
PRIMARY EXAMINER